IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

Civil Application No.261 of 2006
In
Letters Patent Appeal No.55 of 2002

Shri Sunil Yeshwant Pandit .. Applicant/Workman
(Orig. Respondent No.1)
v/s.

Mahindra & Mahindra Ltd.
& ors. .. .. Respondents

Ms.S.S. Chiparikar with Mr.D.Y.Chitnis for applicant-workman.

Mr.C.U.Singh, Senior Advocate with Ms.Melanie D'Souza and Ms.Sushma Joshi i/by M/s.Haresh Mehta & Co. for respondent No.1-Company.

CORAM : H.L. GOKHALE &
SMT.R.S. DALVI, JJ.

DATED : 18th October 2006

P.C. :

1. Heard the learned Counsel for the parties.

2. This Civil Application prays that respondent No.1-Company be directed to pay to the applicant-workman ex-gratia payment promised by respondent No.1 to this Court and recorded in the judgment and order dated 30th November 2005 passed in Letters Patent Appeal No.55 of 2002 to the tune of Rs.Six Lakhs.

3. The above LPA was filed by respondent

No.1-Company challenging the order of the learned Single Judge. The case of the 1st respondent-Company was that the applicant-workman was charged for theft during the course of his employment and according to the Company, the misconduct was proved. The learned Single Judge had accepted the submissions of the applicant, but the judgment and the order of the learned Single Judge was reversed by this Bench by its judgment and order dated 30th November 2005. While passing the order, however, this Court noted in para-27 of its order that the applicant's health had deteriorated and he was suffering from malignancy. This Bench, therefore, asked the Counsel for the 1st respondent-Company as to whether some appropriate amount could be offered to the applicant-workman as a gratuitous payment considering his difficulties. Ms.D'Souza, who appeared for the 1st respondent-Company, thereafter made an offer which is recorded at the end of para-27 of our judgment in the following words:-

> " .... Considering all these factors, Ms.D'Souza appearing for the appellant-Company has taken instructions from the appellant-employer and has stated

> to the Court that in the event the 1st respondent-workman accepts this judgment by giving it so in writing, the appellant is ready to pay to the 1st respondent an amount of Rs.6 lakhs as a gratuitous payment considering his present difficulties. We accept this statement. "

6. Now, it so happened that the applicant-workman chose to prefer an SLP against the judgment rendered by this Bench and the SLP came to be dismissed by the Apex Court by its order dated 27th March 2006 passed in Petition for Special Leave to Appeal (Civil) No.5022 of 2006. The present Application is moved thereafter making the prayer as stated above. Ms.Chiparikar appearing for the applicant-workman submitted that the expectation under the above quoted order was that the applicant, if required to canvass his grievances further, he will do so on his own. Mr.Singh, learned Counsel appearing for respondent No.1-Company, on the other hand, submitted that the wording of the order passed by this Bench is quite clear and it was condition upon the applicant-workman to accept the judgment by giving it so in writing. That apart, he submits that once the order is confirmed by the Apex Court, any

review thereof by the High Court is not expected.

7. Mr.Singh has drawn our attention to the observations of the Apex Court in para-4 of the judgment in **State of Maharashtra & anr. vs. Prabhakar Bhikaji Ingle reported in AIR 1996 SC 3069** to that effect. Ms.Chiparikar submits that this is not an Application for review but this is an Application for direction to implement the order which this Court had given.

8. We have noted the submissions of both Counsel. The wording of our order has been reproduced above. The order is very clear. The offer made by Ms.D'Souza was clearly on the footing that the applicant-workman had to accept the judgment and that was to be stated in writing. It meant that the judgment had to be accepted at that point of time and the matter was not to be carried further. It was on this condition that the amount was offered. The applicant did not accept that offer for reasons and advice rendered to him. This being the position, if the 1st respondent-Company has declined to make payment, we cannot find fault with such a decision of the 1st respondent-Company. This is particularly in view of the subsequent development, namely, that

the order of this Court is left undisturbed by the Apex Court where also it could have been modified appropriately but it is not.

9. In the circumstances aforesaid, the Civil Application is rejected.

(H.L. GOKHALE, J.)

(SMT. R.S.DALVI, J.)